

ABORTION, INFANTICIDE, KILLING THE OLD 319

asserted,¹ they did not allow infanticide, and he knew that the Jews prohibited it.² In the cases of Greece and Rome we have clear instances to prove the opposite tendencies of the mores, with their attendant philosophies and ethical principles, on the conjuncture of the conditions and interests. At Rome children were exposed either on account of poverty, which was the ancient cause, or on account of luxury, egoism, and vice. "Pagan and Christian authorities are united in speaking of infanticide as a crying vice of the empire."³ These protests show that the custom was not fully protected by the mores. Pliny thought it necessary.⁴ Seneca refers to the killing of defective children as a wise and unquestioned custom which he can use for illustration.⁵ For the masses, until the late days of the empire, infanticide was, at the worst, a venial crime. "What was demanded on this subject was not any clearer moral teaching, but rather a stronger enforcement of the condemnation long since passed upon infanticide, and an increased protection for exposed infants. . . . The church labored to deepen the sense of the enormity of the crime."⁶ Evidently infanticide was a tradition with serious approval from one state of things to another in which it was harmful and not needed in any view. In 331 A.D. Constantine gave title to those who rescued exposed children against the parents of the children.⁷ This was in favor of the children, since it increased the chances that they would be rescued, if we must assume that it was their interest that their lives should be spared even if they were reared by men who speculated on their future value as slaves or prostitutes. As a corollary of the legislation against infanticide, institutions to care for foundlings came into existence. Such institutions rank as charitable and humanitarian. Their history is such as to make infanticide seem kind. In 374 infanticide was made a crime punishable by death. Justinian provided that foundlings should be free.⁸ Infanticide continued to be customary. The church worked against it by the introduction of the mystic religious element. The infants died unbaptized. As the religion took a more and more ritualistic character this fact affected the minds of the masses more than the suffering or death of the infants ever had. In a

cold estimate of facts it was also questionable whether the infants suffered any great harm, and the popular estimate of the crime of extinguishing a life before any interests had clustered around it was very lenient. "The criminality of abortion was immeasurably aggravated when it was believed to involve not only the extinction of a transient life, but also the damnation of an immortal soul."⁹ The religious interest was thus brought to reenforce the love of children in the struggle against the old custom. The "canon

¹ Weinhold, *D. F.*, I, 91.

⁵ *De Ira*, I, 15.

² *Germania*, 19; *Hist.*, V, 5.

⁶ Lecky, *Eur. Morals*, II, 29.

⁸ Lecky, *Eur. Morals*, II, 27.

⁷ *Cod. Theod.*, V, 7.

⁴ *Nat. Hist.*, IV, 29.

⁸ Blair, *Slavery amongst the Romans*, 44.

⁹ Lecky, *Eur. Morals*, II, 23.